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PATENT
0091-0207P

IN THE U.S. PATENT AND TRADEMARK OFFICE

Applicant: Derek Gordon WHITAKER

11 APR 2003

Appl. No.: 10/018,316

Group: UNASSIGNED

Filed: December 18, 2001

Examiner: UNASSIGNED

For: SHAPE CONFORMING SURFACE COVERING

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RENEWED PETITION UNDER 37 CFR 1.47(b)

OFFICE OF PETITIONS

Commissioner for Patents
Washington, D.C. 20231

Due: March 3, 2003

Dear Sir:

Applicant, FLEXITEEK INTERNATIONAL AS, hereby petitions the Commissioner to accept the filing of the above-identified U.S. Patent Application by it, as the party to which the invention disclosed and claimed in said Patent Application rightfully belongs, and on behalf of and as agent for the inventor.

Lately, the inventor primarily resides on a yacht with no permanent address, however, the name and address of the inventor refusing to join in this application when filed is as follows:

Derek Gordon Whitaker
29 Welwick Road, Patrington
East Yorkshire, HU12 Orp
ENGLAND

In our original Petition under 37 CFR 1.47(b) we indicated that the invention was developed under the authorization of FLEXITEEK INTERNATIONAL AS. (hereinafter "FLEXITEEK INTERNATIONAL") by Derek Gordon Whitaker of East Yorkshire, HU12 Orp, England, who was employed by

FLEXITEEK INTERNATIONAL to do so. To clarify further, Mr. Whitaker had already developed the invention prior to meeting with FLEXITEEK INTERNATIONAL. Mr. Whitaker presented the invention to the individuals who later formed the FLEXITEEK Corporation for the purpose of further developing the flexiteek product with Mr. Whitaker being employed therewith. An agreement was signed on March 7, 2002 with Mr. Whitaker as the seller and four Norwegian persons as the buyers of the flexiteek product. According to the agreement: Mr. Whitaker obtained a cash payment and other valuable consideration.

Mr. Whitaker later argued that the buying corporation had not fulfilled the requirements of the agreement, and he resigned as employee almost immediately and refused to develop the product for FLEXITEEK INTERNATIONAL, although he retained the up front payment. The Legal Court of Stockholm has ruled, in a legal proceeding, that all requirements of the agreement were fulfilled by the buying persons (FLEXITEEK INTERNATIONAL), and that the entire invention was owned by the FLEXITEEK INTERNATIONAL Corporation. (copy of Decision of District Court of Stockholm previously submitted).

Upon information and belief, based on the precedent which will be discussed below, FLEXITEEK INTERNATIONAL is entitled to clear title to the invention and to the above-identified patent application and any patent which issues thereon.

The Supreme Court of the United States in Solomons v. United States, 137 U.S. 342, 346 (1890), held:

If one is employed to devise or perfect an instrument, or a means for accomplishing a prescribed result, he cannot, after successfully accomplishing the work for which he was employed, plead title thereto as against his employer. That which he has been employed and paid to accomplish become, when accomplished, the property of his employer. Whatever rights as an individual he may have had in and to his inventive

powers, and that which they are able to accomplish, he has sold in advance to his employer.

It is clear that an employee who is paid to develop an invention comes within the scope of the language cited.

Since Whitaker was compensated by FLEXITEEK INTERNATIONAL to further develop a shape conforming surface covering, this invention belongs to FLEXITEEK INTERNATIONAL and the inventor who contributed to the development of the device has a duty to assign the invention, patent application, and any patent which issues thereon to FLEXITEEK INTERNATIONAL and upon direction of FLEXITEEK INTERNATIONAL execute an application therefor.

Furthermore, Mr. Whitaker was provided with a complete set of the application papers, including the specification, claims, drawings and oath/declaration, on several occasions and thereafter repeatedly refused to sign the oath/Declaration. (see Olle Hultman Declaration filed herewith). As such, FLEXITEEK INTERNATIONAL is believed to be entitled to make such application on behalf of and as agent for the inventor pursuant to 37 C.F.R. 1.47(b). Such an action is necessary to preserve the rights of the parties or to prevent irreparable damages.

The required fee of \$130.00 pursuant to § 1.17(h) was previously paid.

Applicant respectfully petitions under the provisions of 37 C.F.R. §1.136(a) and §1.17 for a one (1) month extension of time in which to respond to the Decision On Petition Under 37 CFR 1.47(b). The appropriate Extension of Time Fee is attached hereto.

Docket No.: 0091-0207P
Appl. Serial No.: 10/018,316

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,
BIRCH, STEWART, KOLASCH & BIRCH, LLP

By: 

Michael K. Mutter, #29,680

P.O. Box 747
Falls Church, VA 22040-0747
(703) 205-8000

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MKM/CTB/mpe
Attachments: -Olle Hultman Declaration

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IN THE U.S. PATENT AND TRADEMARK OFFICE

Applicant: Derek Gordon WHITAKER
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OLLE HULTMAN DECLARATION**RECEIVED**

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Commissioner for Patents
Washington, D.C. 20231

OFFICE OF PETITIONS

Dear Sir:

I, Olle Hultman, hereby declare as follows: I am a Swedish patent attorney for Ehrner & Delmar Patentbyrå AB and I have first hand knowledge that the inventor of the above-identified application, Mr. Whitaker, was indeed presented, no less than four times, with a copy of the specification, claims, drawings and an oath/declaration for the above-identified application and he has repeatedly refused to sign the same.

Specifically, On December 13, 2000, Mr. Whitaker visited my office where he was personally presented with a complete set of application papers from our office personnel. In addition, on three other occasions, Mr. Whitaker was sent a complete set of application papers by mail to his last known address. I personally sent Mr. Whitaker at least two complete sets of the documents by mail, once on May 24, 2000 and again on June 20, 2000 and he has repeatedly refused to sign the oath/declaration. Again on August 1, 2000, we mailed another letter asking Mr. Whitaker to sign the documents. We were always met with refusals to sign the documents from Mr. Whitaker.

Mr. Whitaker has not had any known permanent residence address in England. Mostly he seems to be staying on a yacht with no permanent address. However, on our

Atty Docket No.: 0091-0207P
Appl. Serial No.: 10/018,316

first meeting, Mr. Whitaker declared that his home address was in Sweden, c/o TMS Sweden AB, Box 92135, S-120 08 STOCKHOLM, Sweden, and my letters to Mr. Whitaker were sent to said address. I strongly believe that the documents reached Mr. Whitaker because he sent us, on June 15, 2002, five pages of comments by facsimile without any information or hint as to the sender's address.

Since Mr. Whitaker was presented with a complete set of the application papers, including the specification, claims, drawings and oath/declaration, and thereafter repeatedly refused to sign the Declaration, I believe FLEXITEEK INTERNATIONAL should be entitled to make such application on behalf of and as agent for the inventor pursuant to 37 C.F.R. 1.47(b). I believe such an action is necessary to preserve the rights of the parties or to prevent irreparable damages.

Yours very truly,

Ehrner & Delmar Patentbyrå AB

By: 
Olle Hultman

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